REMARKS

Claim 1 is pending in the application and was rejected. Claim 1 was amended and new claims 21 and 22 were added. Applicant respectfully requests reconsideration.

CLAIM REJECTIONS UNDER 35 USC §103

The Office Action rejected claim 1 under 35 USC 103(a), as being unpatentable over Varma (US 6643322 B1) in view of Mahany (US 5,862,171) and Mayer (2002/0145976). Claim 1 is not unpatentable over Varma in view of Mahany in view of Mayer because the combination of references neither teaches nor suggests the claimed method as amended.

Claim 1 has been amended to specify that the transmission parameter is the transmission data rate. Support for this is found at paragraph [0046] of Applicant's specification as published in Pub. No. 2005/0286410 A1. Varma does not discuss what kind of wireless link parameters it relates to. Similarly, the other cited references do not suggest any modification of a system like Varma's to relate to data transmission rates.

The Office Action admits that Varma does not teach wherein the step of selecting the adapted transmission parameter further comprises selecting a different data rate but contends that Mahany teaches this step citing the Abstract at lines 19-21. The cited part of Mahany does not discuss the claimed specifics. Instead, it makes a general statement about modifying the current size of data packet sizes but does not even hint at this being done to change the transmission data rate as now claimed. "A prior patent must be considered in its entirety, i.e., as a whole, including portions that would lead away from the invention in suit." *W. L. Gore & Assoc., Inc.*

v. Garlock, Inc., 721 F.2d 1540, 1550, 220 USPQ 303, 311 (Fed. Cir. 1983), *cert. denied* 469 U.S. 851 (1984).

The Office Action further admits that Varma does not explicitly teach setting the first value to 3 and the second value to 10 but argues that Mayer teaches these limitations. Applicant respectfully traverses this conclusion. The cited parts of Mayer read:

"[0015] In accordance with the present invention, in a system where the receipt of a predetermined number of duplicate acknowledgement messages triggers the retransmission of a data segment that follows the data segment identified in the duplicate acknowledgement, it is proposed to arrange that this predetermined number is an adaptive parameter that may assume values larger than three. This means that the duplicate acknowledgment threshold is a parameter that is adaptable to the general conditions surrounding the sending of data segments, e.g. the conditions of the sending peer, the transmission conditions (as for example determined by the link over which the segments are being sent, or generally by the transmission network over which the segments are being sent), or the conditions of the receiving peer."

"[0011] All such mechanisms as described above for receiving an indication that a data unit has been lost, suffer from the problem that the sending peer only receives an indirect indication that a data unit was lost, and in fact the occurrence of the predetermined triggering event (a time-out or a predetermined number of duplicate acknowledgements) does not necessarily mean that a data unit was really lost. These triggering events can also be caused spuriously, e.g. if a data unit is delayed in the transmission network, while data units associated with segments further on in the sequence are delivered by the network. Such a phenomenon is also referred to as reordering."

"[0012] In "EFR: A Retransmit Scheme for TCP in Wireless LANs" by Yosuke Tamura, Yoshito Tobe and Hideyuki Tokuda, XP-002115028, a new retransmission scheme is proposed. This paper addresses the problem that occurs when a send window is small, such that when a segment is lost, the receiver will not send the three duplicate acknowledgments needed for triggering a fast retransmit, because the number of segments being sent is too small. In this case a fast retransmission is not possible and the sender will wait until a retransmission time-out occurs. As a solution to this situation, it is proposed that when receiving the first duplicate acknowledgment, the sender calculates the value of the duplicate acknowledgment threshold in dependence on the send window size. The algorithm first converts the value of the send window, which is given in byte, into a value reflecting a number of segments, by dividing the window size by a maximum segment size. Then two is subtracted from the result, in order to determine the duplicate acknowledgment threshold. If the calculated threshold value is larger than three, then the threshold is automatically set to three. Therefore, **the value of the duplicate acknowledgment**

threshold is set to one, two or at most three. [emphasis added]"

Claim 1 as amended requires that the state of the node be the first (slower) state in response to determinations of three or more but less than ten successful transmissions and that the node operates in a second (faster) date rate in response to detecting ten or more successful transmissions. None of the cited references whether viewed separately or in combination teach these limitations. Moreover, as established by the above quotation from Mayer, the threshold of Mayer can be one, two or three. Such a range does not establish the threshold values in the claims.

For the foregoing reasons, Applicant respectfully requests allowance of the pending claims. The Director is hereby authorized to charge any fees which may be required, including any petition for extension of time fees under §1.17, or credit any overpayment, to Deposit Account Number 50-0510.

Respectfully submitted,

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